

INITIAL STATEMENT OF REASONS
(Marine Facilities)
May 9, 2006

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the Act) (see Government Code Sections 8574.1 through 8670.72) provides, in part, for the development of oil spill contingency plans for tank vessels, nontank vessels and marine facilities. These plans are to be used to prepare for the response effort that would be necessary in the event of a discharge of oil into the marine waters of the State. The Act authorizes the Administrator of the Office of Spill Prevention and Response (OSPR) to require that all necessary prevention measures are taken, and that sufficient response capability is available to handle a reasonable worst case oil spill. Additionally, the Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are at all times protected by prevention, response, containment and clean-up equipment and operations.

Following the enactment of the above-cited legislation, and the establishment of the OSPR, regulations governing oil spill contingency plans were adopted to ensure that the affected public had clear and timely information regarding the development and submittal of these plans. Included in these regulations were provisions for the "Rating" of Oil Spill Response Organizations (OSROs) for specified services and time frames for response. Contingency plan holders that had a contract or other approved means for the booming, on-water recovery and storage, and shoreline protection services of a Rated OSRO do not have to list that OSRO's response resources in their plan.

The proposed amendments to the regulations are needed to implement the provisions of AB 715 (Chapter 748, Statutes of 2001), which outline the requirements for an OSRO "Rating" program, and require that contingency plan holders only contract with "Rated" OSROs. Amendments of a clarifying or consolidating nature have also been included. The specific purpose for each adoption, amendment, or repeal contained in these proposed regulations is set forth below. Grammatical/technical changes have also been made throughout this subchapter, which have no regulatory effect. Note: The authority and reference citations have been updated throughout this subchapter to reflect the new provisions of AB 715 (Chapter 748, Statutes of 2001) and reorganization of the Act that was also brought about by that bill.

Section 817.02 MARINE FACILITY PLAN CONTENT (EXCEPT FOR THOSE SMALL MARINE FUELING FACILITIES ADDRESSED IN SECTION 817.03 OF THIS SUBCHAPTER)

Subsection (a)(1) has been amended to include fax number and e-mail address contact information. Some of the individuals that need to be contacted live outside the United States and are difficult to reach over the phone. Fax and e-mail information will help facilitate contact with these individuals.

Subsections (a)(2), (3) and (4) have been amended to allow that only contracted Qualified Individual (QI), Agent for Service of Process, and Spill Management Team services need to have an acknowledgement. In-house services do not need this acknowledgement.

Subsection (c)(1)(A) has been repealed as unnecessary. Details on marine facility spills are included in the documentation of spill response, and include information on corrective actions taken to ensure that a spill does not happen again. Including the historical information on spills in the contingency plan is not needed.

Subsection (C)(5) has been repealed as unnecessary. Demonstrating compliance with the safety measures required by other Federal , State, or local agencies is not needed in the plan, and does not need to be submitted with the contingency plan required by OSPR.

Subsection (d) has been amended to clarify the containment booming and on-water recovery requirements that must be met, through a contract or other approved means.

[New] Subsection (d)(3)(C) has been amended to allow the Administrator to conduct a review if increases to the on-water recovery amounts are felt to be warranted. There have been automatic increases to this amount previously, and it is now felt that further increases should be initiated and processed only as needed.

Subsection (d)(3)(F) has been repealed as unnecessary. Containment equipment during oil transfers is already required in CCR Subchapter 6, Oil Transfer and Vessel Operations, beginning at Section 840.

[Old] Subsection (d)(4) has been replaced with the new language that now deals with “Movement of Response Resources”. The new language more clearly outlines the Administrator’s concern that large amounts of response resources not be moved out of one area, to respond to a spill in another area. The new language outlines the process for making such a request to the Administrator, and the criteria for whether this request will be granted.

Subsection (d)(5)(A) has been amended to use the term “effective daily recovery capacity”, which is the term used to replace the obsolete “derated capacity” (see definitions in Chapter 1, Section 790 of this Subdivision).

Subsection (d)(5)(B) has been amended to recognize that plan holders that have contracted with a Rated OSRO may be able to rely on information supplied by that OSRO in meeting the requirement for a description of on-water containment and recovery equipment, as listed.

Subsections (d)(5)(B)(5) has been amended to use the term “effective daily recovery capacity”, which is the term used to replace the obsolete “derated capacity” (see definitions in Chapter 1, Section 790 of this Subdivision).

Subsections (d)(5)(B)(8) has been repealed as unnecessary. Oil transfer equipment is already required in CCR Subchapter 6, Oil Transfer and Vessel Operations, beginning at Section 840.

Subsection (d)(5)(B)(11) has just been moved from [old] (d)(5)(E).

[New] Subsection (d)(5)(E) includes reference to Rated OSROs for response to oil spills of Group 5 oils, to address the facility's Response Planning Volume (which is the correct volume term now).

[Old] Subsection (d)(6) has been repealed as redundant to Subsection (d)(5)(B).

[New] Subsection (d)(5)(F) contains some clarifying amendments which do not substantially alter the meaning of the text.

Subsection (e) contains some clarifying amendments which do not substantially alter the meaning of the text.

Subsection (e)(2)(A) has been amended to recognize that plan holders that have contracted with a Rated OSRO may be able to rely on information supplied by that OSRO in meeting the requirements of this subsection.

Subsection (e)(2)(B) has been amended to consolidate the information in subsection (B)(1)-(3) below, and does not materially alter that subsection.

Subsection (e)(2)(c)(1) – (4) has been amended to more closely match the requirements in place for accommodating equipment maintenance and personnel vacations found in the Nontank Vessel Contingency plan regulations (CCR Subchapter 4, Section 827.02(h)(3)(E)).

Subsection (e)(4)(D) has been added to specify that sufficient personnel for shoreline clean-up operations shall also be identified in the plan.

Subsection (f) contains technical, grammatical changes without regulatory effect.

Subsection(g)(1) has been amended to implement Government Code Section 8670.25.5(d), which specifies that the reporting standard for oil spills is the one established in the California Oil Spill Contingency plan. This plan has established an oil spill to be any amount of oil into California waters. Also (g)(1)(B) now requires that whoever is making the notification of a spill must be fluent in English.

Subsection (g)(2)(A) has been amended to clarify that spills are to be reported immediately. Prior wording could be interpreted that this could be done after waiting 30 minutes after the discovery of a spill.

Subsection 817.02(h)(1)(A) has been amended for clarity. The response planning volume is the correct amount to base the storage calculation on. The reasonable worst case spill calculation applies persistence and emulsification factors, that do not apply when determining oil storage.

Subsection (k) has been amended for clarity. This subsection now makes reference to the requirements in Section 820.01(a) which gives an extensive listing of the requirements of an adequate drill and exercise program. Instead of duplicating the requirements here, it seemed more prudent to direct the plan holder to the well defined drill and exercise section, which will be utilized by all of the regulated community (tank vessels, marine facilities, etc.) Similar reference will be added to those sections as well.

DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:

°None

BUSINESS IMPACT

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No alternative which was considered by the OSPR would be more effective than or equally as effective as and less burdensome to affected private persons than the proposed amended regulations

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)

The regulations, which implement marine facility vessel contingency plan requirements, do not conflict with Federal statutes or regulations.